

III. Identification

A document with your current legal name and address. For example, you might send a bank or financial statement, or a monthly utility bill. Submit either a notarized copy or an original that you do not need back.

IV. *One Document of Date of Birth*

A certified copy of a birth certificate or a copy of another record of birth that has been certified by the custodian of the records. For example, you might send a copy of a religious record which shows your date of birth, or a hospital birth record. If you do not have any record of your birth, the Administrator will accept affidavits of two or more persons attesting to the date of your birth.

If your notification letter says that the Social Security Administration has confirmed your date of birth, you *do not* have to send any further evidence of your birth date.

V. *One Document of Name Change*

If your current legal last name is the same as the last name of the deceased eligible individual this section does not apply.

This section is only required for persons whose current legal last name is different from the last name of the deceased eligible.

1. A certified copy of the public record of marriage.
2. A certified copy of the divorce decree.
3. A certified copy of the court order of a name change.
4. Affidavits or sworn statements of two or more persons attesting to the name change.

VI. *One Document of Evidence of Guardianship*

If you are executing this document for the person identified as eligible, you must submit evidence of your authority.

If you are the legally-appointed guardian, committee, or other legally-designated representative of such an individual, the evidence shall be a certificate executed by the proper official of the court appointment.

If you are not such a legally-designated representative, the evidence shall be an affidavit describing your relationship to the recipient or the extent to which you have the care of the recipient or your position as an officer of the institution in which the recipient is institutionalized.

PART 75—CHILD PROTECTION RESTORATION AND PENALTIES ENHANCEMENT ACT OF 1990; RECORD-KEEPING PROVISIONS

Sec.

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AUTHORITY: 18 U.S.C. 2257.

SOURCE: Order No. 1586-92, 57 FR 15021, Apr. 24, 1992, unless otherwise noted.

§ 75.1 Definitions.

(a) Terms used in this part shall have the meanings set forth in 18 U.S.C. 2257.

(b) *Picture identification card* shall mean a document issued by a government entity or by a private entity, such as a school or a private employer, that bears the photograph and the name of the individual identified. A picture identification card may be a passport, driver's license, work identification card, school identification card, selective service card, or identification card issued by a state.

(c) *Producer* means any person, including any individual, corporation, or other organization, who is a *primary producer* or a *secondary producer*.

(1) A *primary producer* is any person who actually films, videotapes, or photographs a visual depiction of actual sexually explicit conduct.

(2) A *secondary producer* is any person who produces, assembles, manufactures, publishes, duplicates, reproduces, or reissues a book, magazine, periodical, film, videotape, or other matter intended for commercial distribution that contains a visual depiction of actual sexually explicit conduct.

(3) The same person may be both a primary and a secondary producer.

(4) *Producer* does not include persons whose activities relating to the visual depiction of actual sexually explicit conduct are limited to the following:

- (i) Photo processing;
- (ii) Distribution; or
- (iii) Any activity, other than those activities identified in paragraphs (c) (1) and (2) of this section, that does not involve the hiring, contracting for, managing, or otherwise arranging for the participation of the depicted performers.

(d) *Sell, distribute, redistribute, and re-release* refer to commercial distribution of a book, magazine, periodical, film,

videotape, or other matter that contains a visual depiction of actual sexually explicit conduct, and does not refer to noncommercial distribution of the such matter, including transfers conducted by lending libraries.

(e) *Copy*, when used in reference to an identification document or a picture identification card, means a photocopy or a photograph.

§ 75.2 Maintenance of records.

(a) Any producer of any book, magazine, periodical, film, videotape, or other matter that contains one or more visual depictions of actual sexually explicit conduct made after November 1, 1990 shall, for each performer portrayed in such visual depiction, create and maintain records containing the following:

(1) The legal name and date of birth of each performer, obtained by the producer's examination of an identification document, as defined by 18 U.S.C. 1028(d). For any performer portrayed in such a depiction made after May 26, 1992, the records shall also include a legible copy of the identification document examined and, if that document does not contain a recent and recognizable picture of the performer, a legible copy of a picture identification card.

(2) Any name, other than each performer's legal name, ever used by the performer, including the performer's maiden name, alias, nickname, stage name, or professional name. For any performer portrayed in such a depiction made after May 26, 1992, such names shall be indexed by the title or identifying number of the book, magazine, film, videotape, or other matter.

(b) A producer who is a secondary producer as defined in § 75.1(c) may satisfy the requirements of this Part to create and maintain records by accepting from the primary producer, as defined in § 75.1(c), copies of the records described in paragraph (a) of this section. Such a secondary producer shall also keep records of the name and address of the primary producer from whom he received copies of the records.

(c) The information contained in the records required to be created and maintained by this part need be current only as of the time the primary producer actually films, videotapes, or

photographs the visual depiction of actual sexually explicit conduct. If the producer subsequently produces an additional book, magazine, film, videotape or other matter that contains one or more visual depictions of actual sexually explicit conduct made by a performer for whom he maintains records as required by this part, the producer may add the additional title and/or identifying number and the names of the performer to the existing records maintained pursuant to § 75.2(a)(2).

§ 75.3 Categorization of records.

Records required to be maintained under this part shall be categorized and retrievable to: All name(s) of each performer, including any alias, maiden name, nickname, stage name or professional name of the performer; and according to the title, number, or other similar identifier of each book, magazine, periodical, film, videotape, or other matter. Only one copy of each picture of a performer's picture identification card and identification document must be kept as long as each copy is categorized and retrievable according to any name, real or assumed, used by such performer, and according to any title or other identifier of the matter.

§ 75.4 Location of records.

Any producer required by this part to maintain records shall make such records available at the producer's place of business. The business address shall refer to a street address and not to a post office box number. Such records shall be maintained as long as the producer remains in business. If the producer ceases to carry on the business, the records shall be maintained for five years thereafter. If the producer produces the book, magazine, periodical, film, videotape or other matter as part of his control of or through his employment with an organization, records shall be made available at the organization's place of business. If the organization is dissolved, the individual who was responsible for maintaining the records on behalf of the organization, as described in § 75.6(b), shall continue to maintain the records for a period of five years after dissolution.

§ 75.5 Inspection of records.

Any producer required by this part to maintain records shall make such records available to the Attorney General or his delegate for inspection at all reasonable times.

§ 75.6 Statement describing location of books and records.

Any producer of any book, magazine, periodical, film, videotape, or other matter that contains one or more visual depictions of actual sexual explicit conduct made after November 1, 1990, and produced, manufactured, published, duplicated, reproduced, or reissued on or after May 26, 1992 shall cause to be affixed to every copy of the matter a statement describing the location of the records required by this part. A producer may cause such statement to be affixed, for example, by instructing the manufacturer of the book, magazine, periodical, film, videotape, or other matter to affix the statement.

(a) Every statement shall contain:

(1) The title of the book, magazine, periodical, film, or videotape, or other matter (unless the title is prominently set out elsewhere in the book, magazine, periodical, film, or videotape, or other matter) or, if there is no title, an identifying number or similar identifier which differentiates this matter from other matters which the producer has produced;

(2) The date of production, manufacture, publication, duplication, reproduction, or reissuance of the matter; and,

(3) A street address at which the records required by this part may be made available. The street address may be an address specified by the primary producer or, if the secondary producer satisfies the requirements of § 75.2(b), the address of the secondary producer.

(b) If the producer is an organization, the statement shall also contain the name, title, and business address of the individual employed by such organization who is responsible for maintaining the records required by this part.

(c) The information contained in the statement must be accurate as of the date on which the book, magazine, periodical, film, videotape, or other mat-

ter is sold, distributed, redistributed, or rereleased.

§ 75.7 Exemption statement.

(a) Any producer of any book, magazine, periodical, film, videotape, or other matter may cause to be affixed to every copy of the matter a statement attesting that the matter is not covered by the record-keeping requirements of 18 U.S.C. 2257(a)-(c) and of this part if:

(1) The matter contains only visual depictions of actual sexually explicit conduct made before November 1, 1990, or is produced, manufactured, published, duplicated, reproduced, or reissued before May 26, 1992;

(2) The matter contains only visual depictions of simulated sexually explicit conduct; or,

(3) The matter contains only some combination of the visual depictions described in paragraphs (a)(1) and (a)(2) of this section.

(b) If the primary producer and the secondary producer are different entities, the primary producer may certify to the secondary producer that the visual depictions in the matter satisfy the standards under paragraphs (a)(1) through (a)(3) of this section. The secondary producer may then cause to be affixed to every copy of the matter a statement attesting that the matter is not covered by the record-keeping requirements of 18 U.S.C. 2257(a)-(c) and of this part.

§ 75.8 Location of the statement.

All books, magazines, and periodicals shall contain the statement required in § 75.6 or suggested in § 75.7 either on the first page that appears after the front cover or on the page on which copyright information appears. In any film or videotape which contains end credits for the production, direction, distribution, or other activity in connection with the film or videotape, the statement referred to in § 75.6 or § 75.7 shall be presented at the end of the end titles or final credits and shall be displayed for a sufficient duration to be capable of being read by the average viewer. Any other film or videotape shall contain the required statement within one minute from the start of the film or videotape, and before the

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opening scene, and shall display the statement for a sufficient duration to be read by the average viewer. For all other categories not otherwise mentioned in this section, the statement is to be prominently displayed consistent with the manner of display required for the aforementioned categories.

PART 76—RULES OF PROCEDURE FOR ASSESSMENT OF CIVIL PENALTIES FOR POSSESSION OF CERTAIN CONTROLLED SUBSTANCES

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AUTHORITY: 5 U.S.C. 301; 21 U.S.C. 844a, 875, 876; 28 U.S.C. 509, 510.

SOURCE: Order No. 1462-90, 56 FR 1089, Jan. 11, 1991, unless otherwise noted.

§ 76.1 Purpose.

This part implements section 6486 of the Anti-Drug Abuse Act of 1988 (the Act), 21 U.S.C. 844a. This part establishes procedures for imposing civil penalties against persons who knowingly possess a controlled substance for personal use that is listed in 21 CFR 1316.91(j)(2) in violation of 21 U.S.C. 844a and specifies the appeal rights of persons subject to a civil penalty pursuant to section 6486 of the Act.

§ 76.2 Definitions.

(a) *Act* means the Anti-Drug Abuse Act of 1988, Public Law 100-690.

(b) *Adjudicatory proceeding* means a judicial-type proceeding leading to the formulation of a final order.

(c) *Administrative Procedure Act* means those provisions of the Administrative Procedure Act, as codified, which are contained in 5 U.S.C. 551 through 559.

(d) *Attorney General* means the Attorney General of the United States or his or her designee.

(e) *Department* means the United States Department of Justice.

(f) *Judge* means an Administrative Law Judge appointed pursuant to the provisions of 5 U.S.C. 3105.

(g) *Penalty* means the amount described in 28 CFR 76.3 and includes the plural of that term.

(h) The term *Personal Use Amount* means possession of controlled substances in circumstances where there is no other evidence of an intent to distribute, or to facilitate the manufacturing, compounding, processing, delivering, importing or exporting of any controlled substance. Evidence of personal use amounts shall not include sweepings or other evidence of possession of amounts of a controlled substance for other than personal use. The following criteria shall be used to determine whether an amount of controlled substance in a particular case is in fact a personal use amount. The absence of any of the factors listed in paragraphs (h)(1) through (h)(5) of this section and the existence of the factor in paragraph (h)(6) of this section shall be relevant, although not necessarily